CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 416.

SHROPSHIRE, WOODLIFF AND COMPANY

vs.

BUSH ET AL., TRUSTEES, &c.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED SEPTEMBER 29, 1906.

(20,381.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 17, 1906.

1 No. 1527.

United States Circuit Court of Appeals, Sixth Circuit.

SHROPSHIRE, WOODLIFF & COMPANY
v.
BUSH ET AL., Trustees, etc.

Appeal from the District Court of the United States for the Eastern District of Tennessee.

In a case pending under an appeal from a judgment disallowing priority to certain claims for wages due by the bankrupt, there has arisen a question of law concerning which this Court desires the instruction of the Supreme Court for its proper decision.

The only facts necessary to be stated are these:

The Southern Car and Foundry Company, a manufacturing corporation, has been duly adjudicated an involuntary bankrupt, and the appellees have been duly appointed trustees of the bankrupt's estate. The appellants are copartners doing business under the firm name shown in the caption. By purchase and assignment the appellants became the assignees of a large number of claims for wages, none being for a sum in excess of $300.00.

Each separate claim so assigned to the appellants represents wages due and earned within three months before the commencement of proceedings in bankruptcy; and each one of said claims was assigned to the appellants prior to the commencement of said bankruptcy proceedings. Priority was disallowed because of this fact, the bankrupt court being of the opinion that the claims when filed were not for wages then "due to workmen, clerks, or servants, etc."

The question which we certify, and upon which we desire the instruction of the Supreme Court, is this:

Is an assignee of a claim for wages earned within three months before the commencement of proceedings in bankruptcy against the bankrupt debtor, entitled to priority of payment, under section 64 (4), of the Bankrupt Act, when the assignment occurred prior to the commencement of such bankruptcy proceedings?

HORACE H. LURTON,
HENRY F. SEVERENS,
ANDREW M. J. COCHRAN,
Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Sitting in this Case.

2 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit, ss:*

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Shropshire, Woodliff

and Company, *vs.* Bush, *et al.*, Trustees, etc. was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 27th day of September A. D. 1906.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of United States Circuit Court
of Appeals for the Sixth Circuit.

[Endorsed:] United States Circuit Court of Appeals for the Sixth Circuit. Shropshire, Woodliff & Co., *vs.* Bush, *et al.*, Trustees, etc. Questions certified to the Supreme Court of the United States.

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FILED.
DEC 18 1906
JAMES H. McKENNEY

IN THE

SUPREME COURT OF THE UNITED STATES,

SHROPSHIRE, WOODLIFF & CO., APPELLANT.

vs.

THOMAS G. BUSH, THOMAS A. GILLESPIE, and ORION L. HURLBUT, as Trustees of Southern Car & Foundry Co., Bankrupt, APPELLEES.

On Certificate from the United States Court of Appeals, for the Sixth Circuit.

BRIEF AND ARGUMENT FOR APPELLANT.

CHARLES F. BENJAMIN,
RUTHERFORD LAPSLEY,
of Counsel for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES,

SHROPSHIRE, WOODLIFF & CO., APPELLANT.

vs.

THOMAS G. BUSH, THOMAS A. GILLESPIE, and ORION L. HURLBUT, as Trustees of Southern Car & Foundry Co , Bankrupt, APPELLEES.

On Certificate from the United States Court of Appeals, for the Sixth Circuit.

BRIEF AND ARGUMENT FOR APPELLANT.

The Certificate of the Court of Appeals in this matter is as follows:

"In a case pending under an appeal from a judgment dis-allowing priority to certain claims for wages due by the bankrupt there has arisen a question of law concerning which this Court desires the instruction of the Supreme Court for its proper decision.

The only facts necessary to be stated are these:

The Southern Car and Foundry Company, a manufacturing corporation, has been duly adjudicated an involuntary bankrupt, and the appellees have been duly appointed trustees of the bankrupt's estate. The appellants are co-partners doing business under the firm name shown in the caption. By purchase and assignment the appellants became the assignees

of a large number of claims for wages, none being for a sum in excess of $300.00.

Each separate claim so assigned to the appellants represents wages due and earned within three months before the commencement of proceedings in bankruptcy; and each one of said claims was assigned to the appellants prior to the commencement of said bankruptcy proceedings. Priority was disallowed because of this fact, the bankrupt court being of the opinion that the claims when filed were not for wages then "due to workmen, clerks or servants, etc."

The question which we certify, and upon which we desire the instruction of the Supreme Court, is this:

Is an assignee of a claim for wages earned within three months before the commencement of proceedings in bankruptcy against the bankrupt debtor, entitled to priority of payment, under section 64 (4), of the Bankrupt Act, when the assignment occurred prior to the commencement of such bankruptcy proceedings?"

STATEMENT OF THE CASE.

In this case is involved the claim of Shropshire, Woodliff & Company, of Anniston, Alabama, to a right of priority of payment out of the assets of the Southern Car & Foundry Company, in bankruptcy, and the claim is made against Thomas G. Bush and others, as trustees of said estate in bankruptcy.

The original amount of said claim was for the sum of $9,993.42, this amount being the aggregate of a large number of assignments of the wages of various employees of the Southern Car & Foundry Company, which it is agreed were transferred to the claimant, Shropshire, Woodliff & Company, by each of said employees, for a valid consideration, and there is no dispute as to the amount in the aggregate which is due to the petitioners, on account of these transfers,

or assignments of wages. The amount of the claim being ascertained, it is further agreed that the original owners of these various wage claims, which are admitted to have been assigned to the claimant, were of workmen, clerks or servants of the bankrupt company, and the wages earned within three months before the date of the commencement of proceedings, that is, of filing of the original petition for adjudication of bankruptcy, and not exceeding $300.00 to each claimant; and it is further admitted that the claimant is entitled to the priority which they claim as the assignee of the said wage claims, unless it be that the trustees are correct in the technical objection to said claim which they make, and which will be hereafter explained.

Of the total amount of this debt, the sum of $6,810.14 has been paid by the trustees out of the estate in bankruptcy, to the claimant, their right to priority of payment out of the assets of the estate being admitted, and the amount was ordered paid by the court, as a prior lien, out of the assets; also the sum of $429.57 has been settled and adjusted with the claimant, this amount involving a different phase of the question; and the matter was adjusted by a compromise, in which the trustee paid sixty per cent of this amount.

It is thus shown that there is a balance still due the petitioners, and admitted to be a valid debt, against the estate in the sum of $2,753.71, this balance being the amount here in controversy; that the said claim is entitled to priority of payment out of the assets of the estate by reason of the fact that the debt is such as brings it within the terms of Section 64, B. 4, of the Bankruptcy Act, disposes of all other questions than the contention of the trustees that the claim is not entitled to priority of payment, because the wages were assigned to the claimant before the filing of the petition for adjudication of bankruptcy.

The sole question to be decided is whether or not, admitting that an assignee of the claim for wages in a bankruptcy case is entitled to priority of payment out of the assets of the bankrupt estate, such an assignee is entitled to priority where the assignment is taken prior to the filing of the bankruptcy petition.

The claimant filed in the bankruptcy court its claim for the full amount of the money, as a debt due to the claimant by the bankrupt; in this claim, which was in the regular form required for proof of claims in bankruptcy, by a partnership, the claimant set out, and averred that it was entitled to a priority of payment out of the assets of the estate, as to the full amount of the said claim, in the aggregate sum of $9,993.42; and in the said proof of claim, referred to a formal petition which was filed with the bankruptcy court, and before the referee, to whom the cause had been generally referred; setting out the names of the parties from whom the claimant obtained the assignments of wages, the amounts obtained by the claimant by each of the assignments, the nature of the debt, and facts which brought the claim within the operation of the section of the bankruptcy act hereinabove mentioned.

ASSIGNMENT OF ERRORS.

The Appellant in the Court of Appeals, assigned the following errors in the decree:

(1) The court erred in finding that the evidence adduced before the referee upon the issues involved in the said petition, and as set out in the agreed statement of facts filed in this cause, and herewith referred to, did not show that petitioners are entitled to priority of payment out of the assets of this estate.

(2) The court erred in finding that the assignee of a claim for wages due by the bankrupt to workmen, clerks or servants, and earned within three months prior to the filing of the petition in bankruptcy and

not exceeding three hundred dollars to each claimant and assignor, is not entitled to priority of payment out of the assets of the estate in bankruptcy, when the said assignment was taken prior to the filing of the petition in bankruptcy.

(3) The court erred in refusing and disallowing to petitioners the right to priority of payment claimed under their said petition, in the sum of two thousand seven hundred fifty-three and 71-100 ($2,753.71) dollars.

ARGUMENT.

The policy of the Bankruptcy Act clearly shows that it is the debt for wages which is protected, and the *nature of that debt is not changed by the assignment of it. It is the debt for wages, which in its essence has always been considered entitled to the protection of the law, in preference to other debts which may be owed by an insolvent; and it is not the claimant, or the party holding the claim or debt, which this principle of equity, and this provision of many insolvent and bankrupt laws, seeks to favor and protect.*

So far as we have been able to ascertain, there are no decisions of a Circuit Court of Appeals in any of the Circuits, nor has there been a decision in the United States Supreme Court directly involving this question, under the Bankruptcy Act. There are many decisions in the United States Courts, and many precedents which we think apply to, and are decisive of the question here presented; in which the highest courts have had occasion to pass upon the right to priority of a debt for wages, and in which the decisions have repeatedly held that it is the *nature of the debt* which it is the intention of the courts to protect, and *that the right of priority attaches to the claim, and not to the claimant.* Such claims have been protected in the hands of an assignee in many cases; though it was at first thought that the assignee of a wage claim

did not take the priority of the original wage earner in the distribution of the assets of the insolvent.

In the District Courts of the United States, the decisions on this question, under the various bankruptcy acts, are in irreconcilable conflict. And the reasons given in these decisions, which hold that a wage claim in the hands of an assignee taking the same before the filing of the bankruptcy petition is not entitled to priority, are purely technical, and as we believe, unsatisfactory, and unsound in law. There are some of the District Court decisions which hold that it is immaterial as to the time when the assignment occurred, and that it is a forced construction of the law, and does not bear the fair test of such a construction in a court of equity. In other decisions the denial of the right is based upon matters of public policy, and upon lines of reasoning which we think might as well be applied to the admission, as to the denial of the right.

We will seek to fairly present every decision which has been rendered under the Bankruptcy Act, in any way touching upon the right of the assignee of a wage claim to priority of payment out of the assets. We will also attempt to show what has been the uniform rule of the United States Courts in such matters, in cases analogous to the case at bar, and we think that the Court should also consider some decisions of the Supreme Court of Alabama, so far as they apply to cases of this kind. The contracts were made in Alabama, and the Bankruptcy Act expressly recognizes the local laws of the States, applying to liens, and to debts owing to any person, entitled to priority of payment out of the assets of an insolvent estate.

We now refer particularly to the opinion of the referee supporting his decision disallowing the right of priority claimed by the appellants. This opinion is exhaustive in its scope, and many decisions which

have been made in the United States under the Bankruptcy Act, touching this question directly, are mentioned in the referee's opinion. We do not agree with the construction which he places upon these decisions, and we think that he ignores two lines of decision and reasoning which should be considered, and which we think are decisive of this question, on account of the unsatisfactory condition in which we find the precedents under the Bankruptcy Act. When matters of policy are considered by the courts, as certain matters of policy have been argued by the referee as applying to this question, we think that the settled policy of the courts of the United States should be considered, and should be decisive of the bankruptcy case, where the lower courts do not agree.

This court, in the decision of a bankruptcy case, is a court of equity, and has never been held bound to apply strict technical rules in deciding a question involving the class in which a claim against a bankruptcy estate should be placed. There are various classes of creditors under the bankruptcy act, and the debts which have priority, and which are entitled to be paid in full out of bankruptcy estates, and the order of payment, are expressly set out in the Act. The courts have always in such cases considered, and the essence of the question to be decided when a claimant in the bankruptcy court asserted his rights as belonging to this class or the other, has been, *what the nature of the claim is*, and not by whom it is presented to the bankruptcy court for payment. If the claim be of a nature making it a part of the actual and necessary cost of preserving the estate subsequent to the bankruptcy petition, it belongs to the *first class;* if the claim be a part of the cost of administration, such as an attorney's fee, it belongs to the *third class;* if it be a debt owing to any person, who by the laws of the states or the United States, is entitled to priority, it belongs to the *fifth class;* and it is evident

that the nature of the debt is the decisive issue before the court.

THERE IS MANIFEST ERROR IN THE DECREE WHICH WAS RENDERED BY THE REFEREE IN HIS FAILURE TO FIND THAT THE EVIDENCE UPON WHICH THE CAUSE WAS SUBMITTED, SHOWS THAT SHROPSHIRE, WOODLIFF & COMPANY ARE ENTITLED TO PRIORITY OF PAYMENT OUT OF THE ASSETS OF THE ESTATE, FOR THE FULL AMOUNT OF THE CLAIM.

The assignment of error appearing in the record, in effect, sets up the single question which is the issue to be here decided, whether or not the assignee of a wage claim in a bankruptcy cause, is entitled to the priority which would have been accorded to the original owner of the claim. The trustees contest the right of the claimants to priority on the technical ground, assigned as an objection to the claim, that Shropshire, Woodliff & Company acquired the claim prior to the filing of the petition in bankruptcy. In other words, it is attempted to be asserted that the Bankrupt Act fixes an arbitrary time limit within which a wage claim is not entitled to priority; or that the nature of the claim is changed by the assignment of it; or that the nature of the wage claim is changed, and its priority lost on account of the fact that it is presented to the bankruptcy court for payment by a party, who is admitted to be entitled to whatever rights were held by the original wage earner, and is by the assignment subrogated to all his rights, but the nature of the debt is changed, and its priority lost on account of the time at which the assignment was given.

It is hardly necessary to present in argument separately the different forms in which this error is

assigned; as the assignment of error is presented in different forms, in order to fully cover the nature of the case, and the manner in which this appeal is presented.

A priority is defined as "A legal precedence or preference, as in saying that certain debts are paid in priority to others, or that certain encumbrances of an estate are allowed priority over others; that is, they are allowed to satisfy their claim out of the estate before others can be admitted to any share therein."

22 A. & E. Enc. L. 2d Ed. 1297.

In the earlier decisions it was for some time questioned whether or not the assignee of a claim entitled to priority of payment out of an insolvent estate should be accorded the priority of payment which is given to, and is inherent in the nature of the original claim or debt. It was held in some cases that the nature of the debt was changed by its assignment, and that in the hands of a third party it should not be protected and favored by the law, as it would have been if it had not been assigned. The basis of this reasoning was doubtless in the fact that a lien at common law presupposed manual possession of the property on which the lien was to operate; and the assignment of the lien not carrying with it the actual possession of the property, vitiated the right to priority.

In a late work on this subject, it is said, "Liens created by statutes which are not merely declaratory of the common law, and which are not dependent for their existence on the possession of the property to which they are attached, are generally assignable; and an assignment of the claim for which such lien is security will usually carry with it the right to the lien.

19 A. & E Enc. L. 2d Ed. 25.

It has been the uniform practice of the United States Courts to allow priority to labor claims in the

hands of assignees of the wage earner; and these decisions fully establish the proposition which is asserted in the opening paragraph of our argument.

THE RIGHT OF PRIORITY IN A WAGE CLAIM IS A RIGHT WHICH ATTACHES TO THE DEBT, AND NOT TO THE PERSON OF THE ORIGINAL CREDITOR; AND THE RIGHT PASSES BY ASSIGNMENT TO THE ASSIGNEE.

In a case decided by the Circuit Court of Appeals, Eighth Circuit, in 1895, the question arose as to the priority attaching to a preferential debt in a railroad foreclosure suit, in which it appeared that the assignee of the preferred claim acquired the claim some time before the insolvency occurred, and in which it is said, "The money for which the intervener recovered judgment was for amount due him for providing, furnishing and maintaining for the railroad company at Fargo, waiting rooms for its passengers, office rooms for its ticket agents, and a convenient place for its employees to board and lodge at reduced rates." In the opinion, further, the court allowed the priority claim, and used this expression in speaking of the nature of the debt, "*The right of preference is one that attaches to the debt, and not to the person of the original creditor, consequently the right passes to an assignee of the debt. The decree of the Circuit Court is affirmed with interest and costs.*"

Northern Pac. Railroad Co. vs Lamont. 69 Fed. 23.

In a case decided in this Court, the Circuit Court of Appeals, Sixth Circuit, the question arose as to whether the assignee of a labor claim was entitled to the preference which should be accorded to the original claimant. This is the case of the Columbus S. & H. R. Co. Appeals, reported in 109 Fed. 177. In the opinion of this case, on page 197, it is said, "The

third assignment of error in case No. 862, being the appeal of John P. McCune, trustee, should be sustained so far as to place McCune as the assignee under labor claims, upon the footing of the original parties. *The preference attaching to a labor claim is to the claim, and not to the claimant, and passes with the claim to an assignee.*"

Citing, Trust Company vs. Walker, 107 U. S. 596.
Burnham vs. Bowen, 111 U. S. 776.
Railroad Co. vs. Lamont, 16 C. C. A. 364, 69 Fed. 23.

The question of priority attaching to labor claims was involved in a case decided in 1899, by the Circuit Court of Appeals, Seventh Circuit. This case was cited under the Bankruptcy Act of 1898, and involved the construction of Section 64 b. 4 and 5, of the Bankruptcy Act, and is directly in line with the case at bar. This case is cited for the purpose of indicating the tendency of decisions in the United States Courts, defining the nature of wage claims. In the opinion it is said, "It is insisted, however, that the Bankruptcy Act does not preserve these liens. It is said that to hold them valid would be in antagonism to subdivision f. of Section sixty-seven (67) in the Act, which provides 'that all levies, judgments, attachments, or other liens obtained through legal proceedings against a person who is insolvent at any time within four months prior to the filing of the petition of bankruptcy against him, shall be deemed null and void, in case he shall be adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien, shall be deemed duly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt.' But it is to be observed that the lien in the case before us was not obtained through legal proceedings. *It is a creature of the statute, arising from, and immediately*

upon the performance of the labor. The legal proceedings contemplated by the statute do not create a lien, but enforce a lien already existing."

In re Kirby Dennis Co. 95 Fed. 116.

In a case which has been repeatedly cited as authority on this question, decided by the Supreme Court of the United States, in the opinion delivered by Chief Justice Waite, it is said, "This case differs from that of Union Trust Company against Souther, only in the fact that Walker, the present intervener and appellee, is the assignee by purchase from the original holders of the claims, which he seeks to have paid, and one of the questions arising is, whether, being an assignee, and not an original holder, he is entitled to payment. We have no hesitation in answering this question in the affirmative. As we said in Fosdick vs. Schall, 99 U. S. 253, these creditors are paid not because they have in law, a lien on the mortgaged property or income, but because in equity the earnings of the company constitute a fund for the payment of the expenses which their claim represents, before any income arises which ought to be applied to the discharge of the mortgage debt. *Under such circumstances, it is a matter of no importance that the original creditor has parted with the claim. The right is one that attaches to the debt, and not to the person of the original creditor. Consequently, the right passes with an assignment of the debt.*"

Union Trust Co. vs. Walker, 107 U. S. 596. 27 L. Ed. 490.

This question was also before the Supreme Court in a later case, in which the decision in Union Trust Company vs. Walker was approved; and in which it appeared that the debt was for materials used by a railroad and necessary for its operation, *and that the debt was acquired by the assignee of the claim some time before the insolvency.*

Burnham vs. Bowen, 111 U. S. 777. 28 L. Ed. 596.

The facts cited in a case decided by the Supreme Court of Texas in 1890 are illustrative of the principle above stated, and the decision bears out our line of reasoning on the point. "It appears that it was the understanding between the company, the laborers and the boarding house keepers that the company should retain sufficient amount of the laborers' wages to pay their board, and that the wages so retained should be paid the keepers of the boarding house, in discharge of the board. In contemplation of law, the transaction is the same as if the laborers, after the wages were due, had in settlement of their board given orders upon the company for an amount sufficient to pay it, and the company had accepted them. In equity, at least, it is a valid assignment of the debts due for wages."

"So also, there was an arrangement between the company, the laborers, the boarding house keepers, and the grocers who furnished supplies to the latter, to the effect that of the money retained from the wages of the laborers for the benefit of the boarding house keepers, the company should hold and pay to the grocers an amount sufficient to pay their claims for supplies so furnished. It pursuance of this agreement, the company credited the boarding house keepers with the wages of the laborers retained, and also accredited the grocers with the amount of their bills. The claims so accruing in the hands of the boarding house keepers and in the hands of the grocers were properly treated as claims originally due laborers, etc., and duly assigned to the holders. That a right to priority attaching to claims of this character is not deterred by assignment, is settled by the cases of Burnham vs. Bowen, 111 U. S. 777, and Union Trust Company vs. Walker, 107 U. S. 596. * * * * In some instances where a number of these debts due for

wages had become the property of one person, the company gave the assignee a promissory note for the aggregate amount. This merely changed the evidence of the indebtedness, and did not change the character of the debts.

McIlhenny vs. Binz, 80 Tex. 1, 26 Am. St. Rep. 705.

In the case from the Supreme Court of Texas above cited, it is evident that the facts are *very similar to the facts in the case at bar;* there was a running arrangement whereby supplies and accommodations should be furnished to the laborers, and it was understood with the company that their wages should be applied to the liquidation of the debts so due by the laborers for necessary supplies. This, of course, was a continuing arrangement, '*and the right acquired by the assignees of the wage claims was acquired prior to insolvency;* and it was an arrangement necessary on account of the necessitous condition of the laborers, and obviously for their benefit; *and whatever rights were acquired by the merchants, and boarding house keepers, in the wages of the laborers were necessarily acquired before, and not in anticipation of, the insolvency of the company.* In fact, this condition is found to exist in nearly all the cases where there has been priority accorded to the assignee of labor claims. This condition arises from the ordinary state of affairs connected with industrial and manufacturing plants and transportation companies, where a large number of common laborers are employed. Case after case might be cited in which the courts have accorded this priority to the wage claim, and to any other party than the original holder presenting it to the court, as assignee of the wage claim; and in which the courts have not stood on ceremony, nor have been deterred by technicalities, such as are presented by the objection of the trustees to the priority of the claim in the case at bar.

As illustrative of the tendency of the courts in according priority to wage claims, and the manner in which such claims are regarded, we quote from a case decided in 1889, in which wage claims were sought to be established against a bankrupt estate. "Under a literal application of this provision the petitioners could have no claim. The first publication of the proceedings in bankruptcy were made after the adjudication in February, 1877, sixteen months after petition filed instituting the proceedings. Indeed, a literal application of this subdivision would exclude similar charges in very many cases of involuntary bankruptcy, certainly in all contested cases. Between the filing of the petition and the final decision in contested cases, six months will frequently elapse. And when it is considered that these claims are highly favored by the act, being in the same category with the expenses attending the proceedings, and the debts due the public, and coming next after these last, *a construction making them a dead letter in so many instances cannot be the correct one.* Proceedings in involuntary bankruptcy generally come on the respondents suddenly and without warning. No time is given for preparation. The business is shut down at once, and all operators and laborers, a class who live from day to day, are thrown out of their resources. The purpose of this provision is to protect them. The literal construction deters this intent."

In re Waties & Company, 39 Fed. 264.

THE ALLOWANCE OF PRIORITY TO THE ASSIGNEE OF A WAGE CLAIM IS NOT AGAINST PUBLIC POLICY, AND OPERATES IN ALMOST EVERY CASE IN THE INTEREST, AND FOR THE BENEFIT OF THE LABORER.

The attention of the court is directed to the cases which have been cited above for the reason that the court below, adopting the opinion of the referee,

seems to base the decree denying the petitioners the right to priority, on the idea that if priority in such cases were allowed it would operate to the detriment of the wage earner, and, therefore, would be contrary to public policy.

In a recent decision by the Supreme Court of the State of Illinois, the question was directly in issue in a bankruptcy case, as to whether or not an assignment of a wage claim should be recognized; and we think that a part of the opinion is directly relevant to the contention which is made by the trustees in the case at bar.

"We cannot see that there is anything intrinsically vicious in an assignment of wages. The assignor in such case simply draws upon his future prospects to supply present needs, which may be of the most urgent and pressing character. There is no law in this state to prevent a poor person from mortgaging or pledging any or every article of property he possesses as security for his debts; and such a privilege may be of great value. On the whole, we see no reason or right for holding the assignment in question here invalid as against public policy."

"It is next insisted by appellant that because of bankruptcy proceedings had by him the assignment is unenforceable. The position, we think, is wrong. The only effect of a discharge in bankruptcy is to suspend the right of action for a debt against the debtor personally. It does not annul the original debt or liability of the debtor."

"The second proposition urged by appellant is that the assignment in question is against public policy, and for that reason ought not to be upheld. This question was raised in the case of Edwards vs. Peterson, 80 Me. 367, 6 Am. St. Rep. 207, and the court there held that such an assignment did not contravene public policy, and quoted with approval from

the case of Smith vs. Atkins, 18 Vt. 461, in which case it is said:

It is argued that such contracts are so much against public policy that they ought not to be supported; but we think they are rather beneficial, and enable the poor man to obtain credit when he could not otherwise do it, and that without detriment to the creditors."

Mallin vs. Wenham, 208 Ill. 442, 13 Am. B. Rep. 210.

To hold that the assignee of a wage claim taking it before insolvency, or before the filing of a petition in bankruptcy, does not take the priority of the wage claim, would be in effect depriving the wage claim of the most valuable incident of its nature in the courts. The fact that a wage claim is generally understood to be entitled to priority in the distribution of insolvent and bankrupt estates, makes this claim valuable in the hands of laborers; and on account of this incident attaching to it the laborer is enabled, of course, to realize more for his wages. It is a well known, and almost universal custom of manufacturing plants, and transportation companies, employing large numbers of common laborers, to have fixed dates for the payment of wages, monthly or semi-monthly; and often such payments are made a considerable time after the work is done.

It is evident from casual observation of the facts in the cases which have been cited by the courts, that common laborers earning day wages, generally find it necessary to realize on their wages, or a considerable part of their wages, before maturity fixed by their employers; and it is seen in many of these cases that insolvency and bankruptcy coming on usually or generally finds these wage claims in the hands of parties who have furnished necessary supplies to the laborers.

It would be contrary to our common knowledge of the manner in which these manufacturing institu-

tions are operated, to assert that the laborers could secure from merchants the supplies necessary for their living, pending the payment of their wages, but for the well recognized fact that the wage claim is valuable, and can be used for this purpose, on account of the fact that its right to priority is universally recognized.

The Bankruptcy Act, in that section of it here under consideration, provides for priority of payment, as shown in section sixty four (64) b of the act, to several classes of claims. The words used are "cost of preserving the estate," "filing fees," "cost of administration," "wages" "debts owing to persons entitled to priority." The provision of sub-section four (4) further proceeds to define the nature of the claim for wages, in stating by whom it must be earned; and in stating within what time it must be earned; and in connection with the preceding paragraph of our argument, it seems to us that it could not have been the intention of Congress in using these words, to take away from the wage claim in bankruptcy cases the most valuable incident of its nature, which we have called attention to.

UNDER A REASONABLE CONSTRUCTION OF THE TERMS OF THE ACT, THE PETITIONERS ARE ENTITLED TO PRIORITY, PRESENTING THEIR CLAIM AS ASSIGNEES OF WAGE CLAIMS.

It is impracticable to reconcile the decision of the District Courts bearing directly on this proposition. It seems that each court is a law unto itself, deciding each case on the peculiar set of facts involved, and recognizing no general principle for a uniform construction of the terms of the Bankrupt Act.

We will cite these cases, to illustrate the position which has been taken by the courts in the different

districts, and showing the different reasoning which has been followed in admitting or denying, as the case may be, the priority claimed by the assignee of a wage claim. The same provision, or practically the same, has appeared in the several bankruptcy acts adopted by Congress, which were intended to favor and protect the wages of common laborers. It is unnecessary to call attention to certain minor differences which appear in the form of the acts, as the principle is the same in all.

In a case decided under the Bankruptcy Act of 1867, the testimony showed that certain laborers who had been employed by the bankrupt before the petition in bankruptcy was filed, being in destitute condition for necessary supplies, applied to a certain party to advance them $10 each on account of their wages. This money was advanced to each of the laborers, and they each gave to the party advancing the money an absolute assignment of their respective claims for wages.

The petition in bankruptcy was subsequently filed, and the assignee of the wage claims presented his claim. demanding of the court that he be paid $50 on account of each of the said wage claims, as under the Act of 1867 priority only to the extent of $50 in amount to each claimant was allowed to wage claims. The representative of the general creditors objected to the allowance of this claim, and the matter was certified to the District Judge, who rendered a decision allowing the claims and ordering that they be paid. This case directly involves the question here at issue, and the facts upon which the appellants claim priority in the case at bar, are practically the same.

In re Brown, Fed. Cases 1974.

One of the earliest cases, under the Bankruptcy Act of 1898, directly involving the proposition of priority to an assignee of a wage claim was decided

by a District Judge in Minnesota. This is the case upon which the decree of the referee is based, and which decree the appellants now assign as error.

The essence of this opinion, in which no authorities are cited and only a short opinion is given, is contained in one sentence, "There is nothing in the nature of security or lien for the payment of the wages, which could pass to an assignee." Without this statement the opinion is, and could be of no force whatever, and we feel constrained to say that this statement is contrary to the long line of decisions on this question, some of which we have cited in the earlier parts of our brief. Judge Lochren, in this opinion holds that the debts of the bankrupt for labor and services, which at the commencement of the proceedings are in the hands of assignees of the workmen have no priority; and his decision is based upon the statement of the law quoted above, that there is nothing in the wage claim in the way of security or lien which could pass to an assignee.

In re Westlund. 99 Fed. 399. 3 Am. B. Rep. 646.

There is a decision which refers to this ruling in the Minnesota case, decided by a District Judge in North Carolina, which holds that upon assignment of a wage claim after being proved in the bankruptcy court, the assignee becomes subrogated to the priority thus established. As to the issue in the case at bar, this decision must be considered as *obiter dictum*, for the reason that another proposition of law was decisive of that case, as the court held that the claimant was not entitled to priority on account of the fact that there was no assignment, and claimant failed to establish a right of subrogation. In this decision the Minnesota case is mentioned but the District Judge is careful neither to approve nor disapprove of the former decision.

In re North Carolina Car Company. 127 Fed. 178. 11 Am. B. R. 488.

A case decided in the District Court, Eastern District of Wisconsin, mentions the Minnesota case heretofore referred to, and also the decision of Judge Blatchford, under the Act of 1867, and the court does not affirm or disapprove the decision in the Minnesota case. In the opinion, referring to section sixty-four (64) b. 4. it is said. "A provision of like effect under the Act of 1867 was construed by Judge Blatchford to authorize such allowance, and I have observed no ruling otherwise under that Act. Counsel for the trustee relies upon the decision of Judge Lochren in re Westlund, 99 Fed. 339, as ruling contra for the purposes of the present case. That decision is predicated, however, on the fact that the assignment in question was made prior to the filing of the petition, and the wages were not, therefore, due to the workmen at the commencement of the proceedings. *Whether such interpretation is correct requires no consideration here*, for the reason that the referee certifies (as the undisputed proofs show) that these claims were assigned after the bankruptcy proceedings were commenced. I am of opion that the claims are entitled to priority in the hands of the assignee, and should be allowed."

In re Campbell, 102 Fed. 688.

In the reason which has been advanced, opposed to the allowance of the claim involving the rights asserted by the appellant, it has never been asserted and could not be, *that the allowance of the claim to the assignee would be of any detriment to general creditors, any more than it would have been to pay the wages direct to the laborers.* And it is to be observed that none of the later cases approve of the decision of Judge Lochren referred to above.

In a case decided in 1903, in the District Court in West Virginia, the District Judge approves the ruling of the referee allowing priority to a claimant oc-

cupying the identical position which is held by the appellants, and we submit that the reasoning of the referee's opinion is in accord with a long line of decisions on this question, and the propositions of law advanced are entirely sound.

Referring to the case, in re Westlund, it is said:

"This decision (of District Judge Lochren) is directly in point and holds that assignment before the institution of the bankruptcy destroys the priority to which such debts are entitled, because in such case, at the date of the filing, the debt is no longer 'due to workmen, etc.' but the decision merely announces this to be the law, cites no authority, and practically no discussion. The decision not being a binding precedent upon this court, and the referee being unable to concur in the decision or the reasoning of the opinion, declined to follow it, holding that the assignment does not affect the status or character of the claims made priority claims by the Act, and that such status depends upon the nature of the claim and not upon who proves it in the bankruptcy proceedings. To hold otherwise would, in my judgment, deprive the protected class of the most valuable incident of the protection afforded their earnings, namely, their assignability, as the class of earnings protected are peculiarly such class that the earners thereof are most frequently obliged to realize upon before paid, and can only do so by assigning same. In my view they should be given the full protection to their claims and enabled to realize on them at such time as their necessities demand, with the knowledge in their assignees that they are acquiring protected claims which will be secure and paid before general creditors. Nor can I see how such a rule can work to the disadvantage of general creditors, as, had the claims not been assigned, the laborers who earned them could of course, prove their full amount ahead of the general creditors. This their assignees have done,

and no more. Unless the statute in plain words and not by forced construction demands it, I would think it proper that the ordinary effect of the common law relative to assignments should apply here as elsewhere and the assignee stand in exactly the same position as to a claim assigned as the assignor, which would here give him a position in a class preferred, which his assignor possessed."

In his opinion upon the submission of this review the District Judge says, "Upon consideration by the court, the foregoing ruling of the referee is approved in full. I am of the opinion that the Bankruptcy Act was intended by Congress to prefer claims for labor performed within three months prior to the filing of the petition regardless of the fact that they may have been assigned. And I think this is indicated by the use of the word "claimant" instead of "workmen" in section sixty-four (64).

In re C. P. Harmon, 128 Fed. 170. 11 Am. B. Rep. 64.

We have presented all the recent decisions directly involving the question in the case at bar, and have shown that the only decision denying the right of priority is the dicision of the Minnesota District Court; and the subsequent decisions which mention the ruling of the Minnesota Judge either directly disapprove of it, or cast a doubt on the soundness of the rule as there laid down, or decline to affirm or disapprove. It is evident from the reading of the text of Collier on Bankruptcy, Fifth Edition, that the author is in some doubt as to the soundness of Judge Lochren's ruling, when he says, "It has been thought that if assigned to one not a workman, clerk or servant, the right to priority is lost. But this doctrine applies, if at all, only to wage claims assigned before the bankruptcy." And he cites the case of in re Westlund, which we have referred to; also calls attention to other cases in which priority was admitted.

This suggestion in Collier on Bankruptcy that priority might be denied to a wage claim which was assigned before bankruptcy, is not sustained by the long line of decisions in which the priority of wage claims is discussed. It is evident that the wages were to have been paid in full to the claimants if insolvency had not occurred; and after the bankruptcy has intervened the claimants in being paid their claim in full do not receive more than they would have received but for the bankruptcy, and it cannot be said that the payment of the claim is a detriment either to the general creditors, or to the other laborers who did not assign their claims.

Attention is called to the decree of the District Judge, in which he affirms the referee's ruling. The Court mentions the fact that no brief was submitted to him in support of the claim of priority made by Shropshire, Woodliff & Company. A brief was on file with the referee, and doubtless would have been called to the attention of the District Judge, but for the fact that we had been advised that the same court had recently passed upon a case which involved, among other things, the proposition upon which this appeal is submitted; and had decided the case adversely to the right of priority to a wage claim in the hands of an assignee taking the same before bankruptcy.

The case of Browder & Company against Hill, Trustee, decided by the Circuit Court of Appeals for the Sixth Circuit, on April 14, 1905, was a case coming from the District Court for the Eastern District of Tennessee, and was in some respects similar to the case at bar. The decision was wholly based on the fact that there was no assignment shown, and that the facts rather showed a payment of the wage claims, than an assignment of the claims to the party who sought priority. In this opinion it is said, "There is therefore no foundation for any

claim that appellants are assignees of the claims or lien, in behalf of labor claims, under any agreement, express or implied, with the creditors themselves."

In the record of the case at bar there is no suggestion that a condition existed, as is mentioned in the latter part of the opinion in the Browder case. The record of the Southern Car & Foundry Company case, of which this appeal is a part, shows that something over one million dollars in money was handled by the court, and the allowance of the claim of Shropshire, Woodliff & Company could not prejudice the rights of laborers who did not assign their claims. And it appears to us that this suggestion is immaterial, in any event; as we think that we have shown that it has been the policy of the courts to allow priority in the hands of an assignee of a wage claim; and that the assignee has this absolute right, irrespective of any matters of policy involved in the allowance of priority to wage claims. The right of conventional subrogation is not involved in the case at bar, but the court is called on to consider the facts which are shown in the record, and applying the evidence to the statute on this subject in the Bankruptcy Act, to decide whether petitioners are entitled to the priority, when it is admitted that they have a direct and valid assignment.

We do not know to what extent it is relevant to this case, but we call attention to the fact that under the laws of the State of Alabama, and the decisions of the Alabama courts, it has always been the policy to allow priority to the assignee of such claims, on the principle that the assignment carries whatever rights are held by the original owner of the claim, independent of statutory provision to that effect. This is held to apply in various cases in which the court gives the assignee any priority held by the assignor. Some of these instances are, in the case of mechanics' and material men's liens, the landlord's

lien, the lien of a vendor of real estate for the purchase money, and in many other like cases. We quote from a recent decision of the Supreme Court of Alabama, referring to the mechanic's lien, in which it is said, "If this section means anything, its meaning is that the assignment of the claim, the debt, without more, carries with it the assignment of the lien for its enforcement. And, given the assignability of the debt, the lien, it seems, would follow it, even in the absence of express statutory provision to that effect."

Leftwich Lumber Company vs. Florence Mutual B. L. & S. Asso. 104 Ala. 584, p 593.

A decision more directly involving the proposition in the case at bar, was handed down by the Alabama Supreme Court in 1896; in which the priority attempted to be asserted by the assignee of a wage claim, was contested by some of the ablest counsel in the State.

In the statement of facts it is shown that Drennen & Company acquired by assignment a large number of wage claims owing by the insolvent corporation, and filed a petition asking that the receivers be required to pay the said claim in preference to other debts and that the same be accorded priority and preference over mortgages or deeds of trust theretofore executed by the insolvent corporation, Mary Lee Coal & Railroad Company.

The opinion rendered by Chief Justice McClellan reviews fully all the decisions involving this question, and cites, among other cases, the cases which we have cited in the earlier part of this brief. The contracts of assignment held by Shropshire, Woodliff & Company being executed in the State of Alabama, we quote a part of the opinion just referred to, in order to show that the Courts of Alabama recognize the line of reasoning which we have argued in this brief. "It may be—probably is—that all which is said in the cases about railroads, and this equity being con-

fined to the property, etc., of railroad corporations, comes from a conservative view of the sacredness of the rights of mortgages as against the subsequently accruing claims of third persons, and is prompted by an apprehension that if the principle is allowed to operate in respect of the property of other corporations, as to which there may not be, from all points of view, the same necessity for its application, it would become an engine of oppression to bondholders and be used in violence to their vested rights and interest. This view is most commendable, but the apprehension is without any reasonable foundation, it seems to us. *If the principle is equitable in itself, it can never be used to work injustice or inequity to bondholders, or to anybody else.* And that it is equitable in itself, and without reference to whether the mortgagor corporation is a railroad company or not, is demonstrated by the opinion of Judge Waite in Fosdick vs. Schall, which has been uniformly followed and never doubted, and is demonstrable by every consideration obtaining in the premises. * * * * "The claims of the petitioners being labor done within six months before the appointment of the receiver come within the strictest rule declared by any of the cases as to time.—5 Thomp. Corp., Sec. 7115."

"No objection to the relief prayed can be based upon the fact that petitioners claim as assignees of the employees.—5 Thomp. Corp., Sec. 7117."

Drennen vs. Mercantile Trust & Deposit Company, 115 Ala. 592, pp. 610, 621.
Hammerly vs. Mercantile Trust & Deposit Company, 123 Ala 596.

In his Commentaries on the Law of Corporations, Judge Thompson refers to the priority of wage claims in the hands of an assignee; summarizing what we take to be the true doctrine as deduced from established precedents.

"In respect of such priorities, there is no legal

distinction between claims which remain in the hands of the original parties furnishing the labor or materials, and claims which they have assigned to others. For instance, where an arrangement is made with a railroad company, whereby a sufficient amount of the wages of its laborers is to be retained by the company to pay their board, the claims of the boarding house keepers for such amounts are to be treated as claims originally due the laborers and duly assigned to the boarding house keepers, and the assignment of such claims for such purpose, does not destroy their right of priority. Where, in such a case, a number of these debts, due for wages, had become the property of one person, and the railroad company gave the assignee a promissory note for the aggregate amount, this merely changed the evidence of the indebtedness, but did not change the character of the debts, and the holder of the note was entitled to the same priority which attached to the original debts."—5 Thomp. Corp. Sec. 7117.

CONCLUSION.

We think that the conclusion of the referee, and the trend of the argument is misleading, and that his conclusion is unsound in law, and unreasonable; for the reason, that a casual reading of the opinion would make it appear that later decisions had approved the decision of the Minnesota Court. We have been unable to find that it has been approved by any subsequent decision, though it has been several times mentioned in cases which were decided later in point of time; and we think, in its essence, that the principle upon which that case was decided will not stand the test of a comparison of established precedents on this subject.

A close examination of the referee's opinion reveals the fact that he bases his conclusion largely on this Minnesota case; and as we have pointed out be-

fore, the gist of that decision is in the expression which the District Judge uses, to the effect that there is nothing in the nature of a claim for wages, in the way of security or lien, which could pass to an assignee.

We have referred to a long line of decisions in the Federal Courts which, we think, clearly show the nature of the wage claim as the United States Courts have regarded it; and we think that this court should follow this line of precedents; and more especially, when the decisions of the District Courts which have been delivered under the last Bankruptcy Act are in conflict on this question. If it is a matter of policy, as suggested in the referee's decision, and in the latter part of the aforesaid Minnesota decision, we think that the policy of the United States Courts handling this question is decisive in favor of our right to priority.

It will be considered by the Court in the decision of this case, that the trustees of the bankrupt corporation are supposed to represent the interests of general creditors; and are insisting on an equitable and equal distribution of the assets between all creditors. The contention which they make in opposing the claim to priority which is insisted upon by Shropshire, Woodliff & Company, must result, if it is maintained, in general creditors receiving more than they could have received but for the fact that the wage claims were assigned. It is said in one of the cases above referred to, that there is nothing intrinsically vicious in an assignment of wages; there is nothing in the law to prevent any person from realizing on wages which have been earned by him, and we insist that the construction which is sought to be placed on this sub-division of the Bankrupt Act, must result in taking away from the wage claim the most valuable incident of its nature, namely, its assignability at any time the wage earner needs to realize on his work.

It is argued by counsel for the trustees, as a conclusive reason why the priority should not be allowed to the claimants in this case, that the necessity for this provision of the law is found in the conditions personally applicable to the workmen himself, his necessities his helplessness.

Whereas, it must be admitted that if it is established as a precedent that priority should be denied to the assignees of wage claims, whether taking them before or after the filing of the petition in bankruptcy, the wage claim would not be worth in the market anything like its face value; and the wage earner would be at the mercy of the speculators who are referred to by counsel for the trustees. It is not an issue in this case whether or not speculators in wage claims should be "the object of the tender solicitude of the law"; there is nothing before the Court to show that full value has not been paid for these wage claims.

There is nothing in the terms of the Act which, by the application of the ordinary and reasonable rules of construction, could be held to limit the priority to any particular time; much less is there anything in the Act limiting the priority of a wage claim upon the happening of a given event. Such a contention insists upon a forced and unreasonable construction of the law.

Respectfully submitted,

Charles F. Bongartz,

Attorney for Appellants.

NOTE:—The italics appearing in quotations from cases cited in this brief, are ours.

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Oct. Term, 1905.

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IN THE

SUPREME COURT OF THE UNITED STATES.

SHROPSHIRE, WOODLIFF & CO., APPELLANT.

vs.

THOMAS G. BUSH, THOMAS A. GILLESPIE, and ORION L. HURLBUT, as Trustees of the Southern Car & Foundry Co., Bankrupt, APPELLEES.

On Certificate from the United States Court of Appeals, for the Sixth Circuit.

BRIEF AND ARGUMENT IN REPLY TO BRIEF FILED FOR APPELLEES.

CHARLES F. BENJAMIN,
RUTHERFORD LAPSLEY,
FOR APPELLANT.

IN THE

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For the trustees, who are appellees in this court, two lines of reasoning are advanced, which are mutually destructive. It is insisted that the wage claim must be, on the date of the filing of the bankruptcy petition, actually collectible by the workman himself who has earned the wages, or the priority is lost; on the other hand, they insist that this rule denying priority to the assignee of the wage claim must be applied as a beneficent provision to take care of the necessities and helplessness of the laboring man; thus taking away from the labor claim its most valuable incident, namely, its assignability, and its

priority of payment in the hands of persons who have advanced the amount of the wages to the laborer at a time when he was in need. The fallacy of this latter argument is shown in several cases which we have cited in the original brief, particularly the case referred to on page twenty-two of our brief, in which the leading case relied upon by the trustees is fully discussed.

In the brief filed for appellant in this cause, we based our argument on the proposition that the right of priority in a wage claim is a right which attaches to the debt and not to the person of the original creditor. This proposition is clearly established by a long line of decisions handling this question directly, which we have referred to in our brief; and unless the intention of Congress to depart from the settled construction placed upon the question by the Federal Courts is directly shown, in the case at bar, the rights which we assert should be sustained.

The argument for the trustees does not attempt to show to the Court any reason why the nature of the wage claim, and the priority which should be accorded it, is changed by the assignment of the claim from the original holder; in fact it is tacitly admitted that the nature of the wage claim is not changed by its assignment. The argument for appellees makes no attempt to show that the cases which we cite, holding that the nature of the debt is not changed by its assignment, are not relevant and applicable; they seek, however, to meet this issue by confession and avoidance, insisting upon a strictly technical construction of the Act, without reference to the equity and practical application of it in bankruptcy cases.

To accomplish this result they join two phrases of the clause of the Act under consideration, which have no natural connection, and are evidently not intended to be read together. In seeking to read into the act a construction which is not borne out by any

of the previous Federal Court decisions on this question, they make clause four (4) of Section 64-b, read, "wages due to workmen at the date of commencement of proceedings;" and insist that therefore the wage claim, which is admitted to have priority, in the hands of an assignee, must be denied that priority, if the wage claim is in the hands of an assignee on the date when the proceedings are commenced.

In Section 64 of the Act, it was the intention of Congress to provide for the payment in full out of the bankrupt estate *certain classes of debts;* and, of course, *these classes of debts being placed in correlative paragraphs or clauses, are to be considered of a kind.* That part of the Bankruptcy Act under consideration reads as follows:

"Section 64, (b) Debts to have priority, except as herein provided, and to be paid in full out of the bankrupt estate, and the order of payment shall be

(1) The actual and necessary cost of preserving the estate subsequent to filing the petition;

(2) Filing fees paid by creditors in involuntary cases, etc;

(3) Cost of administration, including fees and mileage payable to witnesses, etc.;

(4) Wages due to workmen, clerks or servants which have been earned within three months before the date of the commencement of proceedings; not to exceed three hundred dollars to each claimant."

It is evident from a casual consideration of this section 64 that it was the intention of Congress to designate certain claims or debts which should be protected in any event, out of the assets of the bankrupt estate. The contention of the trustees that the absolute liability of the bankrupt estate under section 64 b 4, should be for such wage claims as were collectible by the wage earner himself, if such contention is sustained, would make this clause of the act of small importance in the practical operation of the

law in bankruptcy cases.

There are two principal assertions made by the appellees upon which they seek to justify their refusal to allow the appellant's claim.

They contend that the bankruptcy act in express terms limits the priority in the wage claim to the person of the wage earner himself.

They further say that Congress intended this construction of the law for the benefit of the laboring man on account of his necessities and helplessness, when insolvency of his employer occurs.

It was not the intention of Congress to overturn the well settled rule of construction in cases involving the wage claim, so as to deny to it the right of priority of payment out of the bankrupt estate.

So far as we know the question has never been carried to the Supreme Court of the United States; or to the Court of appeals except in the case at bar. We have shown in our brief on pages 18 to 23, that only twice in the district courts has the issue been directly presented and decided under the bankruptcy act of 1898. These two cases are, the case decided by the court in Minnesota upon which the appellees rely, and the case reported in 128 Fed. 170, In re C. P. Harmon. These two decisions are directly in conflict, the latter case disapproved of Judge Lochren's decision, and gives what we consider to be a fair discussion of the merits of the assignee's rights to priority which we here assert.

It is not necessary in order to give to the assignee of any specified claim the right to priority, that the statute should in so many words state that an assignee is subrogated to the rights of his principal. The general law of contracts would give the as-

signee for value the rights held by the original claimant, and unless the statute in express terms denies this right to the assignee, it will be accorded as of course.

It is not perverting the terms of the bankrupt act to say that the assignee of the wage claim is entitled to the priority which the bankrupt act accords to the workman. It would be as reasonable to insist that Congress intended that the money must actually be paid to the workman, and not to an attorney who might charge him an unreasonable fee.

We have pointed out in our brief on page 20, that the essence of the Minnesota decision is contained in the sentence, "There is nothing in the nature of security or lien for the payment of wages which could pass to an assignee." Congress could not have intended a construction of this provision of the law relating to the wage claim, which would adopt this sentence as in accordance with the spirit of the national bankrupt law.

Federal Courts in passing upon the nature of a wage claim have always held that the security and priority passed to an assignee of the wage claim, irrespective of the time when the same was assigned. We do not think that there is any cause for the criticism which counsel for trustees make, of that part of our brief in which we show the many Federal Court decisions passing upon the rights of an assignee of a wage claim; for the reason that under the Bankruptcy Act of 1898 there are only two cases which have passed directly upon this question, and the later case disapproves of the former upon which the trustees rely.

We fail to find any statement in our brief that warrants the assertion of counsel for trustees, that we have reluctantly admitted that the majority of the decisions under the bankrupt act are unfavorable to our view of the case. We asserted in our brief, and

now assert, that there are only two cases directly deciding this question under the act of 1898, and one under the act of 1867.

In re Westlund, 99 Fed. 399, and in re C. P. Harmon 128 Fed. 170, are the two cases decided under the present bankrupt act; and we are inclined to think and believe that the Court will consider, that the reasoning of the decision in the latter case is more conformable to the evident spirit of the Bankrupt Act than that of the former. The case decided under the Act of 1867, In re Brown, Fed. cases 1974, is distinctly in our favor; as we have pointed out on page 19 of our brief.

The inconsistency of counsel for Trustees is further shown in their urging as a precedent in their favor the case referred to in the referee's brief, found in the New Jersey Equity Reports.

They say that our suggestion that certain Alabama cases might be considered by the Court as relevant to this issue, is not to be considered by the court, because it has to do with the State Insolvency Law, and not with the National Bankrupt Act. Still the New Jersey decision is considered by them as a very fine authority on the question at issue, when it is admitted that it is based entirely on the New Jersey Insolvency Law. We are inclined to think that the basis of the referee's decision contrary to the admission of rights which we assert, may be found in certain expressions used in the decision construing the State Insolvency Law of New Jersey.

The admission of the right of priority in a wage claim in the hands of the assignee, as herein asserted, is in the interest of and for the benefit of the wage earner.

It is strongly urged in the brief which has been

filed for the Appellees that Shropshire, Woodliff & Company should not be paid in full the amount of their claim, for the reason that they fall in the category of what counsel see fit to denominate "speculators." They insist that the law should not be enforced in such a way as to countenance the nefarious practice of that class of financiers who prey upon the necessities of the poor laboring man.

If there is anything in this record to bear out or support such a contention, either in the facts or in the law of the case, we fail to find it. The quotation which we make from a recent decision of the Supreme Court of Illinois, is directly relevant.

"We cannot see that there is anything intrinsically vicious in an assignment of wages. The assignor in such case simply draws upon his future prospects to supply present needs; which may be of the most urgent and pressing character. There is no law in this state to prevent a poor person from mortgaging or pledging any or every article of property he possesses as security for his debts, and such a privilege may be of great value."

Mallin vs Wenham, 208 Ill. 442.

We do not know why such a line of argument should be countenanced, which has for its evident purpose the casting of an insinuation on the merits of the claim, making use of an argument which is entirely irrelevant.

In order to sustain the position which they had taken, counsel for trustees started out with the argument that a literal and strict construction of the Act must be had, irrespective of the purpose and equity of the Act. They then shifted their position, and insisted that the claimants were speculators, and that no court of equity would protect them in their wicked practices; that the law must be enforced for the benefit of the poor and helpless laboring man;

and therefore the claim of appellant must be denied.

It has been well said that the allowance of priority to the assignee of a wage claim is no detriment to the general creditors of the estate; as, but for the assignment, the full amount of wages would have been paid to the laborer, and in either event it is of no concern to the creditors, who do not claim priority. The trustees are seeking to protect the interests of the general creditors, and we respectfully submit that there is nothing in their contention that the Bankruptcy Act fixes an arbitrary time limit, marking a division line between priority to the assignee of a wage claim at a certain time, and the disallowance of the right which they claim, if the assignment occurred at another time.

Respectfully submitted,

C. F. Benjamin,

K. Ripley,

Attorneys for Appellant.

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IN THE

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On Certificate from the United States Court of Appeals for the Sixth Circuit.

BRIEF AND ARGUMENT FOR APPELLEES

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vs.

THOMAS G. BUSH, THOMAS A. GILLESPIE, and ORION L. HURLBUT, as Trustees of Southern Car & Foundry Co., Bankrupt, APPELLEES.

On Certificate from the United States Court of Appeals, for the Sixth Circuit.

BRIEF AND ARGUMENT FOR APPELLEES

I.

The question certified in the cause is this:

"Is an assignee of a claim for wages, earned within three months before the commencement of proceedings in bankruptcy against the bankrupt debtor, entitled to priority of payment, under section 64 (4), of the Bankrupt Act, when

the assignment occurred prior to the commencement of such bankruptcy proceedings?"

Section 64 of the Bankrupt Act is as follows:

Sec. 64. Debts Which Have Priority.—(a) The Court shall order the Trustee to pay all taxes legally due, etc.

(b) The debts to have priority, except as herein provided, and to be paid in full out of the bankrupt estate, and the order of payment shall be:

(1) The actual and necessary cost of preserving the estate subsequent to filing the petition;

(2) The filing fees paid by creditors in involuntary cases, etc.;

(3) The cost of administration, etc.;

(4) *Wages due to workmen, clerks or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant.*

What, then, is the meaning of this Sub-section Four, as applied to the state of facts given in the certificate in this cause?

It is admitted that, under this sub-section, priority is given to a limited extent to wages *due to workmen* at the date of the proceedings in bankruptcy, but is priority also given to wages *earned* by workmen but due, *not to them,* but to an assignee?

In the outset, we beg to call attention to the fact that this question has been answered in the negative by every Federal Court that, until now, has had occasion to pass upon it; that, until now, this answer has been taken as the accepted rule controlling the distribution of assets in bankruptcy cases; and that this conclusion has been adopted by every text book on the subject of our present Bankrupt Act.

It will be said, and correctly said, that this may be true, but it is not controlling. Nevertheless, it is at least persuasive, for, if the Courts, in ascertaining the meaning of language so simple, have with such unanimity been led into a

conclusion, the direct opposite of the real intent of Congress, it must be that our language is a very treacherous vehicle for thought, or the Courts themselves have been very unfortunate.

In discussing the question presented, it will be noticed that Counsel for Appellants do not catch hold of the actual words used in this sub-section, and endeavor to educe therefrom their real intent and meaning, nor do they attempt to ascertain this meaning by considering these words in the light of the purpose and spirit of the Bankrupt Act. On the contrary, Counsel have been pleased to content themselves with making an excursion into other fields and to garner there the information which is to guide and control us here.

It is doubtless true that, under the labor laws enacted by the legislatures of most of the states, the lien given in favor of the wages of workmen passes with the wages to an assignee; and, it may be true, that Congress should have done likewise when it enacted our present bankrupt law. But the question is not what the various states have done, nor what Congress might, could, would or should have done, but only this, what Congress *has done*.

The pith of Appellants' contention is that the purpose of this sub-section is to give priority "to the *claim* (of workmen) and not to the *claimant;*" that is to say, the intention is to give a special favor or privilege to the *debt* created by the workman because of the peculiar character of the *debt* and not to give a special favor or privilege to the workman himself because of the peculiar situation of the workman.

If in this Appellants be correct, it follows, of course, that the lien given to the debt passes with it to an assignee and the latter will be entitled to priority in its payment, notwithstanding that, at "the date of the proceedings in bankruptcy," the wages were not "due to workmen," as required by the express words of the Bankrupt Act.

II.

"As a general rule, the words of a statute, if of common use, are to be taken in their natural and ordinary sense, and

without any forced or subtle construction to extend their meaning."

If, in construing this sub-section, we apply this familiar rule of construction and take the words used by Congress in their ordinary sense, we soon reach the end of argument. Congress has said that the debt of this class which shall have priority is the debt which at "the date of the proceedings in bankruptcy" is *due to workmen*.

Thus, if we understand at all the ordinary meaning of these ordinary words, it is clear that Congress has seen fit to prescribe *two conditions* upon which priority under this sub-section will be given to a debt due by a bankrupt, and these two conditions are: it must be a debt due on account of *wages* and this debt must be *due to* a workman.

If the intent had been to prescribe only one condition, namely, that the debt need only be on account of wages, in such event, it seems to us, Congress would have said "wages of workmen, etc.," or "wages earned by workmen, etc." The limitation, however, of the right of priority to wages due to workmen seems to preclude the idea of wages not due to workmen but due to third persons.

That this is the natural and legitimate meaning of the language used by Congress in this sub-section, appears, we think, with mathematical certainty, from the following consideration: Under the Bankrupt Act no right to a lien or to a priority under any of the provisions of Section 64, attaches in favor of any person or in favor of any particular kind of debt, until "the date of the commencement of proceedings" in bankruptcy.

Therefore, prior to such date no workman can be said to have, by reason of the Bankrupt Act, a lien on account of any wages then due to him.

If, then, under such circumstances, there is at that time no lien attaching to this debt of wages due to workmen, it follows, of course, that there is no lien to pass with such wages when at such time they are assigned to a third person. Now, when, later, proceedings in bankruptcy are commenced, the Bankrupt Act, under Section 64, gives certain rights of

priority in favor of certain classes of claims and also in favor of certain classes of claimants. Some of these rights are to arise in futuro, namely, cost of administration, etc., while others attach by reason of the state of things *then existing.* This latter fact, the state of things existing at "the date of the commencement of proceedings" in bankruptcy, is, we submit, the test which determines the right to priority given under Section 64 (4). Taking this as the test, it seems to us to follow conclusively that no lien arises at that date except in favor of:

(1) Wages, "not to exceed $300 to each claimant;"

(2) "Which have been earned within three months before the date of the commencement of proceedings;" and,

(3) Which are *"due to workmen."*

If all the foregoing conditions exist at the date of the commencement of proceedings, the right to priority then attaches to the wages then due to workmen, and will pass with any *subsequent* assignment thereof; but as to wages assigned *prior* to the date of such proceedings, no right to priority arises, because, at the date of the assignment none existed, and, at the date of the proceedings in bankruptcy the only right to priority given is to wages then due to workmen.

III.

If, therefore, the words "wages due to workmen" are to be given a meaning the opposite of their natural import, it must be because the purpose and spirit of the Bankrupt Act so requires.

The *purpose* of the Act was two-fold—to enable honest insolvents to rid themselves of the burden of debt on condition that they surrender to their creditors all of their property; and, again, to enable creditors under certain conditions to compel insolvents to surrender all of their property for the benefit of the former. With this purpose in view, we find the *spirit* or dominant idea controlling the operation of this Act in the distribution of assets among creditors to be *equality.* Equality, then, is the *equity* of this Act

and from this rule the Act only departs when constrained by reasons of great necessity.

What was the necessity or reason that actuated Congress in giving priority to wages *due to workmen, clerks and servants?*

In the abstract, and without regard to holders, there are no degrees of merit between just debts. Debts for borrowed money, for supplies, for insurance, for salaries, or for wages are equally just and meritorious. All contribute equally to produce or protect the assets for distribution among creditors. If it be said that labor claims in themselves are meritorious because they have made possible the very property which is being distributed, it must be remembered that this result is equally due to the debt contracted for supplies, without which there would have been nothing for labor to work on.

If this be true, then it must follow that it is not the intrinsic *character* of the *debt* arising from the labor done by workmen, clerks and servants that gives birth to the necessity or reason which constrains Congress in this subsection to depart from the equity of equality and to give priority in favor of workmen, clerks and and servants. What, then, is the reason for the departure?

It seems to us it must be conceded that the reason, and the only reason, for this provision of the law is found in the conditions, personally and peculiarly applicable to the workman himself—his *necessities* and *helplessness.* Congress knew that as a rule the workman lives from hand to mouth and is rarely protected by surplus savings; hence, when in a proceeding in bankruptcy the operations of his employer are terminated, the workman finds himself without employment and without credit, and there is left him as the only resource, whereby may be supplied his immediate wants, the wages then *due to* him.

If under such circumstances the workman's wages are put upon a common footing with all other unsecured claims, want and suffering must certainly follow. Therefore, because of this helplessness of the workman and his family, and

to prevent as far as possible the suffering that must result to the workman from the loss of his meager earnings, Congress has provided that *"wages due to"* him, to a limited extent, shall have priority.

Thus is made apparent the reason impelling Congress to use the significant words, *"wages due to workmen, etc.,"* instead of *"wages earned by workmen, etc."* And this purpose —to give priority only to the wages *due* to workmen at the date proceedings in bankruptcy are instituted—becomes more apparent when we consider that the Act further limits this priority to a sum *"not to exceed three hundred dollars,"* and to wages *"which have been earned within three months, etc."* This further limitation is utterly inconsistent with the idea of an intention to favor a *class of debts* on account of any peculiar merit in them. On that theory there would be no reason for allowing part and disallowing part of the wages. It is, however, perfectly consistent with the idea that the priority is given, not to the *labor claim*, but to the *wage-earner*, for the purpose of relieving his distress. Accordingly, his debt not being, of *itself*, more meritorious than others, Congress has only protected enough of his wages to serve the purpose of the intended relief, and the balance of his claim is placed on the same basis with other just debts.

But neither in the letter nor the spirit of the Act do we find priority given to wages earned by workmen but *due to speculators* at the "date of the commencement of proceedings" in bankruptcy. The speculator has never been the object of the tender solicitude of the law. Indeed, it is common knowledge that around and about mining and manufacturing concerns this genus hovers to grow fat off the improvidence and the misfortunes of the laborer. The extent of the average profit resulting from this traffic is a scandal which is not mitigated by the fact that too often an official of the corporate employer is a secret sharer in the spoils. These things Congress knew, and, knowing them, it seems to us that Congress sought with apt language to indicate that in departing in this instance from that equity which is equality, it did so only in favor of *"wages due to workmen"*

and not in favor of wages *due to speculators.*

If in this we are correct, it follows that the intent and meaning of Sub-section 4, Section 64, is to give priority in favor only of a certain *class of persons* and not to a certain *class of debts,* and, therefore, an assignment of the debt prior to bankruptcy proceedings cannot give to the assignee a right to priority in payment.

It is thus seen that the *letter* of the law gives accurate expression to its *spirit,* and, that both will be violated by allowing priority to wages due an assignee where the assignment was made *prior* to "the date of the commencement of proceedings in bankruptcy."

IV.

We now desire to discuss the decisions of the Federal Courts in reference to this sub-section of our present Bankrupt Act.

Counsel for appellant reluctantly admit in their brief that the weight of such authority is on the negative side of the question. It will be found that some of the cases cited in counsels' brief have not the slightest application to the question certified, and, when reference is made to a case in point, the holding of the Court is so minimized as to be hardly recognizable.

We shall not encumber this brief with an unnecessary analysis of each of these cases, but will present what we believe to be a fair and judicial review of each and every reported case in which was determined the question at bar.

To secure this result, we beg to quote from the able opinion of D. L. Grayson, Esq., the Referee who decided the case below:

"Coming now to a discussion of the authorities under the present Act, we find the earliest decision to be the case of In Re Westlund et al., reported in 99 Fed. Rep., page 399, a decision by District Judge Lochren. In this case the petitioners were the owners by assignment of claims for labor performed for the bankrupt within three months before the date of the commencement of bankruptcy proceedings. Each

separate claim so assigned was for less than $300.00, which claims were duly filed by the petitioners, who claim the priority accorded by Section 64, B. 4 of the Act for wages due workmen, clerks or servants. Discussing this question, the court says: 'This language requires that a debt for wages to have priority must be due to the wage-earner; if the claimant entitled to priority might be an assignee, there would be no reason why such claims should be restricted to $300.00, as he might be the owner of several small claims, each less than that amount, but aggregating more. The clause referred to is intended to favor the class whose reliance for the maintenance of themselves and families is generally upon their wages as earned. There is nothing in the nature of security or lien for the payment of wages which could pass to an assignee. No right to priority arises or exists until the proceeding in bankruptcy is instituted, and then the wages assigned are not 'due to workmen, clerks or servants,' but to their assignees, and are outside the language of this clause. If debts for wages so assigned can be allowed priority, they may come in conflict or at least in competition with other claims for wages due and owing to the same workmen, clerks or servants earned within the same three months and lessen the payments, if the assets will not pay in full all debts having priority. It must be held, therefore, that debts of the bankrupt for labor and services which, at the commencement of the proceedings in bankruptcy are not due to workmen, clerks or servants, but to assignees, have no priority.'

"It will be at once noted that among the reasons offered by Judge Lochren for denying the right to priority we find the same reason offered by Judge Acheson in the Erie Rolling Mill Company case under the Act of 1867, to-wit., that claims in the hands of an assignee, if allowed priority, might come in conflict or at least in competition for other claims for wages due and owing to the same workmen, clerks or servants earned within the same three months and lessen the payments if the assets were not sufficient to pay in full the debts having priority. That is precisely what the effect would be in this case had not the assets exceeded the sum of $50,000,

for at the date of the filing of the petition in bankruptcy there was $44,000 due to workmen, clerks and servants of the bankrupt, and earned within three months prior to the bankruptcy which had not been assigned by them, in addition to the amounts assigned these petitioners, making something over $50,000 of wages in all.

"The next decision is the case of In Re Campbell, reported in 102 Fed. Rep. 688 by District Judge Seaman. In this case, however, the wages assigned were transferred subsequent to the commencement of the proceedings in bankruptcy, and the court states that it is unnecessary, therefore, to determine whether or not the decision of Judge Lochren in respect to assignments ante-dating the bankruptcy was correct; but the court rests its decision upon the proposition that claims being assigned after the bankruptcy were necessarily at the date thereof 'due to the workmen, clerks and servants,' and therefore necessarily embraced within the purview of the law.

"In the case of In Re North Carolina Car Company, reported in 127 Fed. Rep., page 178, it was held by District Judge Purnell that the provisions of Section 64, B. 4 were for the benefit of the wage-earner alone, and do not entitle a bank to priority for money advanced to the insolvent for the payment of pay rolls of such laborers which the insolvent agreed to assign to the bank. In discussing and construing this section, the court states: 'To give a claim priority under this section, it must be due the wage-earner; should such wage earner prove his claim and establish his priority, he could then assign it and the assignee would be subrogated to this priority; but, if assigned before being thus proven, the assignee would acquire no more right to priority than the assignee of any other unsecured debt. But it will be noted there was no privity between the wage-earner and the bank and there was no actual assignment. This section is discussed In Re Westlund; but in that case there was an actual assignment before the bankruptcy proceedings, and it was held that the assignee was not entitled to priority. There is nothing in the record to entitle the claimant to priority

and the claim, if allowed, must be as an unsecured one without priority.'

"In the case of In Re Harmon, reported in 128 Fed. Rep., page 170, it was held by both the referee and District Judge Keller that where it appeared that prior to the bankruptcy a large number of laborers holding claims for labor performed for the bankrupt assigned such claims to two of their number who were also laborers and who held claims of their own, in order to save costs in prosecuting suits against the bankrupt to recover such wages, the assignee agreeing to account to their assignors for the amounts due each one, that this did not deprive the claim so assigned of their right to priority. The district judge holds, in a very brief opinion, that the provision allowing these claims for labor performed within three months prior to the filing of the petition is regardless of the fact that they may have been assigned; and he offers as the sole reason for this opinion the fact that the statute, section 64, B. 4, uses the word 'claimant' instead of 'workmen.' But, in its vital facts, this case is totally different from either the Westlund case decided by Judge Lochren or the North Carolina Car Company case decided by Judge Purnell, both of which are in accord. It will be noted that while the claims allowed priority in this case were nominally assigned before the bankruptcy, yet the assignees held the same, not in their own right, but as trustees for the original holders, and for the express purpose only of facilitating their collection, the assignees acting merely as agents of the assignors for that purpose only. The referee himself stated in his opinion as one of the reasons for allowing the priority 'that the assignment is proved to be intended as and actually creating the assignees, Tucker and Sisley virtually merely trustees for the laborers.' As I view this case, therefore, in legal effect, and certainly if not at law, in equity, at least, all of these claims so assigned except those held by Tucker and Sisley in their own right for their own earning, they being fellow workmen, were still due at the date of the commencement of proceedings in bankruptcy to the assignors themselves, and hence were undoubtedly entitled to priority.

"There is quite a distinction to be made between the Westlund case in which the right to priority was asserted in favor of assignees who had acquired all right, title and interest of the wage-earners prior to the bankruptcy, and the facts of this case in which the assignees were only nominal and not actual owners of such claims, and for this reason, if for nothing more, I think this decision entitled to very little weight; nor do I think, furthermore, that the reason offered by Judge Keller for his view, that congress intended to prefer claims for labor performed within three months, and whether held by an assignee under an assignment prior or subsequent to the bankruptcy, is of much force. I do not consider that the word 'claimants' as used in the provision was intended to expressly or even impliedly include an assignee of the claim, but to prevent the useless repetition in the latter portion of the section of the words 'workmen, clerks or servants' used in the first sentence thereof; and, in my judgment, the word 'claimant' was only inserted therein to avoid the necessity of useless repetition of three several words defining the class of persons to whom priority was accorded.

"In the case of In Re Gurewitz, decided by the Circuit Court of Appeals of the Second Circuit and reported in 121 Fed. Rep. 982, it is held that a workman who is paid by the piece instead of by the day or by the month is also entitled to priority for his labor as accorded by this section. It is said: 'The legislative intent in the foregoing provision is manifest. It is to give a preference, limited in time and amount, to those employes of the bankrupt who worked for wages. It surely could not have been the purpose of Congress to make the method of computation the criterion of priority. * * * In order to secure priority under this section, the creditor must establish the following facts: First, that he was a workman, clerk or servant of the bankrupt; second, that he earned wages within three months prior to the commencement of proceedings.'

"Although this decision is, with respect to the particular question we have in hand, somewhat of an obiter dictum,

yet here is a clear intimation by this court that the creditor seeking priority must himself belong to the class accorded priority, and this, of course, is not true of the petitioners in this case.

"These are all of the decisions under the present act that have any bearing upon the questions before the court so far as I am advised, and I have been referred to no other."

See also:

Loveland, 276;
Collier, 503;
Brandenburg, 1043;
Cyc. Law & Proc., Vol. 5, p. 386.

We, therefore, submit that our proposition is sustained, namely, that the question certified "has been answered in the negative by every Federal Court that until now has had occasion to pass upon it."

V.

Finally, we desire to discuss briefly the authorities, State and Federal, mentioned in Appellants' brief, wherein the right to a lien of an assignee of wages is recognized and enforced under laws other than our present Bankrupt Act.

(1) In the first place, it is pointed out that it is now well recognized, where a railroad is sold under foreclosure proceedings, a preferential lien is accorded to wages earned by workmen within a period of six months next preceding the foreclosure proceedings, and, that this lien is good in favor of an assignee who takes by assignment made prior to such proceedings.

This is not only true as to wages, but it is true as to material furnished within the period. The equity underlying the principle is that the material thus furnished and the labor thus done have entered into and become a part of the property securing the mortgage bond and have actually worked a benefit to the bondholder.

Hence, the lien thus recognized is because of the *character* of the *debt* then created and not because of the character of the *claimant*.

Thus, in Railroad vs. Lamont, 69 Fed. 23, the Court, speaking of the lien thus given in favor of one who had provided waiting rooms for the company's passengers, office rooms for its ticket agents, etc., said:

"The right of preference is one that attaches to the *debt* and not to the *person* of the original creditor, consequently the right passes to an assignee of the debt."

We have never denied this proposition. But the question presented here is, whether or not in law priority is given under Section 64 (4) on account of the character of the debt earned by workmen or because of the *person* to whom the debt is due?

The case above mentioned is authority only for the proposition, that, if under Section 64 (4), the right to priority is given to the *debt*, this right will pass with the debt to an assignee.

To cite this and the many other cases as authority for the real question now presented is but begging the question.

(2) Again, appellants have pressed at much length the proposition that labor liens under State Statutes are assignable.

We do not deny this fact, but we submit that the cases cited can have no application here for several obvious reasons:

(a) The question here is not what the States have been pleased to do in the matter of their insolvency laws, but what Congress has actually done under the bankrupt law.

(b) In the next place, the purpose of State insolvency Statutes is materially different from that of our bankrupt law.

The State Statutes regulate the relative rights of employee and employer under all circumstances, and are passed by legislatures whose object is to make the pay of laborers prompt and secure while they work for going concerns as well as in cases of insolvency. But to impute such a purpose to Congress, is to ascribe to the Act a broader scope than any bankrupt law ever had or than is compatible with its very

nature. Such laws have to do only with the estates of insolvents.

Under ordinary circumstances, the laborer must look for protection to state laws, and the cases cited show that he has usually not looked in vain. But Congress proposed to enact a bankruptcy law. It proposed to give insolvents and their creditors the power, through the machinery of the United States Courts, to suddenly shut down the works of employers of labor and seize all their assets. In determining the conditions that should be imposed upon the exercise of this right, it was considered that to force needy laborers to await a tedious administration, and then receive a pro rata would entail real distress. To avoid this, Congress has said to creditor and debtor alike, that, whenever the benefits of the bankrupt law are invoked, one of the conditions upon which the courts of the United States will stop a going concern and administer an insolvent estate shall be that the hardship resulting to wage-earners shall be reduced to a minimum by paying wages which are *then due to workmen* and can be used to relieve their distress.

(c) Finally, it will be found that the language used in the State Statutes not only manifests a clear intent to give a preferential right in favor of wages because of the character of the debt and not of the claimant, but this other material difference exists, namely, that in none of these State Statutes, with one exception, is the lien, by express terms, limited to those *to whom wages shall be due* upon the happening of a given event.

But where the statute of a state, by its express terms, limits the lien given "to those to whom wages shall be due upon the happening of a given event," it will be found that an assignment of the wages, made prior to such event, does not carry with it a lien.

This point is illustrated in the New Jersey case, of which the Referee says:

"In the case of Delaware, Lackawanna & Western Railroad vs. Oxford Iron Co., reported in 6 Stewart, New Jersey Equity Reports, page 192, the following facts appear: Sec-

tion 63 of the New Jersey corporation act provides, 'In case of insolvency of any corporation, the laborers in the employ thereof shall have a lien upon the assets thereof for the amount of wages due them respectively, which shall be paid prior to any other debts of said company.' It appearing that some of the laborers had assigned their claims prior to the date of the insolvency of the Oxford Iron Company, and their assignees claiming priority, the court, construing this statute, said: 'Does the lien arise in favor of an assignee of a claim for wages who acquired his right prior to the date of insolvency fixed by the decree? The wages, to be within the operation of the statute, must be due to a person in the employ of the corporation at the time when it becomes insolvent; if prior to that time they are assigned so that when insolvency occurs they are not due to an employee, no lien arises. Such, I think, is the plain direction of the statute. The purpose of the statute is obvious. It is sometimes a matter of the utmost importance to the public that the business of an insolvent corporation should be kept in operation, and it is almost always true that the property of such bodies cannot be preserved unless they are kept up as going concerns. The statute was designed to accomplish both of these purposes, and to this end it was clearly necessary that the employees of a corporation in an insolvent condition, whose skill and labor was indispensable to the continuance of its operations, should be made secure for their wages. To enable an insolvent corporation to retain its employees is the primary object of the statute. Persons holding claims for wages who are not in the employ of the corporation at the time when it became insolvent are not, therefore, within its policy nor entitled to its protection. It is undoubtedly true that the assignment of a debt carries with it any security which the assignor holds; but when these assignments were made, the assignors had no lien or security; the right of lien arose subsequent, and though the assignors may still have been in the employ of the corporation when it became insolvent, the wages previously assigned were not due to them, but to persons not entitled to the character of employees.'

"I think the reasoning of this case, which, it will be noted, is in full accord with the reasoning given by Judge Lochren in the Westlund case, which was followed by Judge Purnell in the North Carolina Car Company case, and which is not, in my judgment, at all in conflict with the decision of Judge Keller in the Harmon case, is conclusive of the question. It has been well said that the bankrupt law gives no lien, in a strict legal sense, to workmen, clerks or servants; but that it merely gives them the right to priority of payment over general creditors. How could workmen, clerks or servants, prior to bankruptcy, be said to have any priority, lien or right (whatever we may choose to call it) which could be capable of assignment? The act itself creates the priority and the date the act fixes for it to take effect is the date of the commencement of proceedings in bankruptcy, which is the date of the filing of the petition. This statute is certainly sui generis, to the extent at least that it fixes its own method of distribution; and how a right to priority could be asserted based upon a transaction prior to the filing of the petition, I am unable to see. The bankrupt act deals with conditions as it finds them at the time the law is invoked; it is not retroactive in its operation except when expressly made so by certain provisions, such, for example, as that dealing with preferences. But the priority accorded by Section 64, B. 4, in my judgment, becomes fixed and of effect only at the date of the commencement of proceedings, and the status or right of the claimant to priority must be determined as the facts existed at that time. The right to priority depends upon a condition in presenti and not upon a condition either precedent or subsequent. Such, in my judgment, is the plain intent and meaning of the language used. If any other construction is placed upon this provision, the effect of it is to hold that whether or not the assignee of a claim for wages due to workmen, clerks or servants acquires any priority whatever over unsecured creditors must depend entirely upon an event subsequent to the date of the assignment under which he claims, which event, to-wit, the filing of a petition

in bankruptcy within three months thereafter, may or may not ever take place.

Being, therefore, of the opinion that prior to the filing of the petition and the commencement of proceedings thereby, the workman, clerk or servant has no priority to assign since he has no lien, but a mere preferential right which the law gives him merely because he belongs to a favored class, it must necessarily follow, if I am right in this conclusion, that these petitioners acquired no priority over unsecured creditors."

Upon appeal to the District Court at Chattanooga, Judge Clark, in affirming the Refree, said:

"The cases seem almost overwhelming against any other view than that contained in the ruling of the Referee."

Respectfully submitted,

GEORGE D. LANCASTER,
for Appellees.

JOHN P. TILLMAN,
J. H. BEAL,
of Counsel.

See 147 Fed. Rep., part 3, page 752. Dec. 13, 1906.

Supreme Court of the United States.

No. 416.—October Term, 1906.

Shropshire, Woodliff & Co. *vs.* Bush et al., Trustees, &c. } On a certificate from the United States Circuit Court of Appeals for the Sixth Circuit.

[January 7, 1907.]

Mr. Justice Moody delivered the opinion of the Court.

The appellees are trustees of the bankrupt estate of the Southern Car and Foundry Company. The appellants, before the commencement of the proceedings in bankruptcy, acquired by purchase and assignment a large number of claims for wages of workmen and servants, none exceeding $300 in amount, and all earned within three months before the date of the commencement of the proceedings in bankruptcy. The District Court for the Eastern District of Tennessee rendered a judgment disallowing priority to these claims, because, when filed, they were not "due to workmen, clerks or servants."

On appeal to the Circuit Court of Appeals for the Sixth Circuit that court duly certified here for instructions the following question:

"Is an assignee of a claim for wages earned within three months before the commencement of proceedings in bankruptcy against the bankrupt debtor entitled to priority of payment, under section 64 (4) of the bankrupt act, when the assignment occurred prior to the commencement of such bankruptcy proceedings?"

The question certified has never been passed upon by any Circuit Court of Appeals, and in the District Courts the decisions upon it are conflicting. (*In re Westlund et al.*, 99 Fed. Rep. 399; *In re St. Louis Ice Company*, 147 Fed. Rep. 752; *In re North Carolina Car Company*, [Semble], 127 Fed. Rep. 178, where the right of the assignee to priority was denied; *In re Brown*, Federal Cases, 1974, [Act of 1867]; *In re Harmon*, 128 Fed. Rep. 170, where, on facts slightly but not essentially different, the right of the assignee to priority was affirmed.)

The bankruptcy law (Act July 1, 1898, 30 Stat. 544, p. 563), in section 1, defines "debt" as including "any debt, demand or claim, provable in bankruptcy." Section 64, under which priority is claimed in this case, is, in the parts material to the determination of the question, as follows:

"Sec. 64. Debts which have Priority.— . . . *b*. The debts to have priority except as herein provided, and to be paid in full, out of bankrupt estates, and the order of payment, shall be . . . (4) wages

due to workmen, clerks or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed $300 to each claimant; . . ."

The precise inquiry is whether the right of prior payment thus conferred is attached to the person or to the claim of the wage earner; if to the person, it is available only to him, if to the claim it passes with the transfer to the assignee. In support of the proposition that the right is personal to the wage earner, and enforceable only by him, it is argued that it is not wages earned within the prescribed time which are given priority, but wages "due to workmen, clerks or servants;" that when the claim is assigned to another it is no longer "due to workmen, clerks or servants," but to the assignee, and therefore when presented by him lacks one of the characteristics which the law makes essential to priority. In this argument it is assumed that the wages must be "due" to the earner at the time of the presentment of the claim for proof, or at least at the time of the commencement of the proceedings in bankruptcy. Without that assumption the argument fails to support the conclusion. But the statute lends no countenance to this assumption. It nowhere expressly or by fair implication says that the wages must be due to the earner at the time of the presentment of the claim, or of the beginning of the proceedings, and we find no warrant for supplying such a restriction. Regarding, then, the plain words of the statute, and no more, they seem to be merely descriptive of the nature of the debt to which priority is given. When one has incurred a debt for wages due to workmen, clerks or servants that debt, within the limits of time and amount prescribed by the act, is entitled to priority of payment. The priority is attached to the debt and not to the person of the creditor; to the claim and not to the claimant. The act does not enumerate classes of creditors and confer upon them the privilege of priority in payment, but, on the other hand, enumerates classes of debts as "the debts to have priority."

In this case the Southern Car and Foundry Company had incurred certain debts for wages due to workmen, clerks or servants, which were earned within three months before the date of the commencement of proceedings in bankruptcy. These debts were exactly within the description of those to which the bankruptcy act gives priority of payment, and they did not cease to be within that description by their assignment to another. The character of the debts was fixed when they were incurred, and could not be changed by an assignment. They were precisely of one of the classes of debts which the statute says are "debts to have priority."

The question certified is answered in the affirmative, and

It is so ordered.